

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Telefónica Larga Distancia |) | |
| de Puerto Rico, Inc. |) | |
| |) | WCB Docket No. 06-1 |
| Petition for Expedited Declaratory Ruling |) | |
| Regarding Section 253 of the |) | |
| Communications Act of 1934, as amended |) | |

REPLY COMMENTS OF AT&T INC.

AT&T Inc. and its affiliates (“AT&T”)¹ submit these Reply Comments in response to the Commission’s November 10, 2005, Public Notice in this proceeding (DA 06-32). AT&T supports the petition filed by Telefónica Larga Distancia de Puerto Rico, Inc., (“TLD”) requesting that the Commission declare that the Puerto Rico Telephone Company’s (“PRTC”) pending Single Zone Tariff Plan is preempted by the Act.²

I. BACKGROUND

In response to the enactment of the federal Telecommunications Act of 1996 (the “Act”), the Puerto Rico legislature enacted the Puerto Rico Telecommunications Act, Law 213 of September 12, 1996 (“Law 213”). As a result of the mandate of Law 213, telecommunications

¹ On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. Thus, in these comments “AT&T” refers to the merged company, including its AT&T of Puerto Rico, Inc. subsidiary.

² On Friday, February 3, 2006, PRTC informed the Telecommunications Regulatory Board of Puerto Rico that PRTC had “cancelled” its Single Zone Tariff Plan. If PRTC has, in fact, withdrawn its Single Zone Tariff Plan, AT&T has no objection to the Commission dismissing this proceeding without prejudice. Before doing so, however, the Commission should require PRTC to disclaim unequivocally any intention of moving forward with its Single Zone Tariff Plan or any variant thereof. Moreover, any dismissal must be without prejudice to the ability of TLD, or any other party, to seek relief from the Commission in the event PRTC endeavors to engage in similarly anticompetitive conduct in the future.

markets in Puerto Rico, including the intrastate long distance market, were opened to competition.³ Until then, PRTC had had a monopoly over telecommunications services in Puerto Rico. Upon passage of Law 213, AT&T, TLD, and other telecommunications companies began competing directly with PRTC. Today, AT&T competes against PRTC, as well as TLD, Sprint and other carriers, in the provision of intrastate, interstate and international long distance services in Puerto Rico. Although some companies also compete with PRTC for local business services, PRTC largely maintains its monopoly control over the local residential market in Puerto Rico.

II. THE COMMISSION SHOULD GRANT TLD'S PREEMPTION PETITION

PRTC's Single Zone Tariff Plan will effectively eliminate intrastate long distance competition and turn back the clock on the competitive gains brought to Puerto Rico consumers by Law 213. PRTC's Single Zone Tariff Plan appears to be a direct response to a 2003 decision by the Puerto Rico Telecommunications Regulatory Board ("Puerto Rico Board") ordering PRTC to reduce its intrastate access charges from over 9 cents per minute to 2.1 cents per minute ("2003 Access Order"). Under PRTC's Single Zone Tariff Plan, all of PRTC's residential customers will be required to subscribe to intrastate "local" service from PRTC, at higher monthly rates designed to offset PRTC's loss of intrastate long distance toll revenue. Given PRTC's control of the residential market, its Single Zone Tariff Plan will effectively shift intrastate long distance calls that are now subject to competition to local calls for which there is

³ See *Telecommunications Regulatory Board of Puerto Rico's Comments* at 2-3.

no competition. Put simply, PRTC's Single Zone Tariff Plan will eliminate intrastate long distance competition in Puerto Rico.⁴

PRTC's earlier response to the Puerto Rico Board's 2003 Access Order foretells the effects that its Single Zone Tariff Plan will have on intrastate long distance competition. In 2004, PRTC reduced the number of local calling areas in Puerto Rico from 68 to 10, which correspondingly reduced the amount of intrastate long distance minutes in Puerto Rico. Indeed, AT&T estimates that it lost nearly 50% of its intrastate long distance revenues in Puerto Rico as a consequence of PRTC's reduction in the number of local calling areas. PRTC's Single Zone Tariff Plan takes this one step further—it will reduce the number of local calling areas in Puerto Rico to 1, effectively eliminating all intrastate long distance revenues, and thus intrastate long distance competition.

On December 20, 2005, TLD filed a petition requesting the Commission issue an expedited declaratory ruling establishing that PRTC's pending Single Zone Tariff Plan violates § 253 of the Act. AT&T supports TLD's petition. The Puerto Rico Board's approval of PRTC's tariff—either by affirmatively approving the tariff or by permitting it to go into effect and thus tacitly approving it—is a “legal requirement,” that will have the effect of prohibiting AT&T from providing “intrastate telecommunications service” in Puerto Rico. 47 U.S.C. § 253(a). Accordingly, 47 U.S.C. § 253(d) requires that the Commission preempt PRTC's tariff “to the

⁴ PRTC's claims that it will be “hamstrung” in its ability to respond to competition if its Single Zone Tariff Plan is prohibited, and that its Single Zone Tariff Plan will benefit consumers who demand intrastate local calling plans are patently disingenuous. *PRTC Comments* at 16-19. No one opposes PRTC's ability to offer optional intrastate calling plans. Rather, it is the mandatory nature of PRTC's Single Zone Tariff Plan that causes it to be anticompetitive. *See, e.g., Sprint Comments* at 4. Indeed, because it forces all residential PRTC customers to subscribe to an intrastate local calling plan, including those who would rather continue to subscribe to intrastate toll service provided by a competitive carrier, PRTC's Single Zone Tariff Plan plainly will not benefit all Puerto Rico consumers.

extent necessary to correct” its effect of prohibiting competition for intrastate long distance service in Puerto Rico.

Respectfully Submitted,

/s/ Jim Lamoureux

Jim Lamoureux
Gary L. Phillips
Paul K. Mancini

AT&T INC.
1401 I Street NW 4th Floor
Washington, D.C. 20005
202-326-8895 – phone
202-408-8745 – facsimile

Arnaldo A. Mignucci
Mignucci & perez-Giusti, P.S.C.
268 Ponce de León Ave.
Home Mortgage Plaza
Suite 800
San Juan, Puerto Rico 00918
787-296-0112– phone
787-296-0116– facsimile

Its Attorneys

February 6, 2006